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SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: January 19, 2021

Item Number: 27

Item Description: Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19

Submitted by: Vice Mayor Sophie Hahn

Adds information regarding interaction with “Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration” adopted by the Berkeley City Council on Dec. 15, 2020, and input from City Staff, and local restaurants with temporary outdoor permits, on benefits and costs.



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CONSENT CALENDAR

January 19, 2021

To: Honorable Members of the City Council
From: Councilmember Sophie Hahn (Author), Councilmembers Kate Harrison and Ben Bartlett (Cosponsors)
Subject: Extending Time for Temporary Parklets and Sidewalk Seating Post COVID-19

RECOMMENDATION

Adopt an ordinance revising BMC Chapter 16.18 *Right-of-Way Encroachments and Encroachment Permits* and BMC Section 14.48.150 *Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

BACKGROUND

On June 2, 2020, the City Council referred to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency.¹

The item further directed the City Manager to facilitate and expedite potential use of both public and private property for outdoor dining and other retail activities by implementing or, where necessary, returning to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations. To eliminate a financial burden on small businesses, the City Manager was requested to consider reducing or waiving permitting and other fees.

On June 16, the Council adopted an Urgency Ordinance taking actions to allow for increased outdoor dining and commerce in the public right-of-way, including to simplify

¹“ Berkeley Safe Open Air Dining and Commerce,” Berkeley City Council, June 2, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/Documents/2020-06-02_Supp_2_Reports_Item_11_Rev_Hahn_pdf.aspx.

the permitting process for parklets during a declared local emergency; and to expand the areas and scope of activities that may be permitted via a sidewalk seating permit during the term of a declared City emergency; and a Resolution authorizing the City Manager to waive permit fees for one year for temporary structures and activities permitted in the public right of way.²

City staff responded by expanding the range of allowed outdoor activities on both public and private property and streamlining permitting processes. The City offered options for permitting outdoor business activities during COVID-19, on private property or in the public right-of-way, including street closure permits, sidewalk seating, and parklets.

Since the adoption of the Berkeley Safe Open Air Dining and Commerce referral and subsequent Urgency Ordinance, dozens of businesses have utilized parklets and built facilities for outdoor seating, allowing patrons space to safely dine and shop in the open air while maintaining social distance. Overall, the program has been a tremendous success, affording local restaurants and other businesses the ability to survive and continue to pay staff during a difficult time.³

On December 15, the Council referred to the City Manager “Path to Permanence” legislation requesting development of a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City’s declaration of emergency to permanent status.⁴ Some businesses may follow this path to permanence, while others may choose to end outdoor dining and commerce when the COVID-19 emergency is terminated.

This item offers a third path by adopting an ordinance to extend the period of time that parklets and sidewalk seating established under the COVID-19 emergency order can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

Under this proposal, businesses that have made an investment in open air dining and commerce structures during the pandemic will have longer to recoup their costs and to decide whether to transition to a permanent facility. In addition, extending the period of time that sidewalk seating and parklets can remain in place will allow staff more time to work with those seeking to transition their temporary outdoor dining and commerce permits to permanent status

CONSULTATION

² Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way,” Berkeley City Council, June 16, 2020, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

³ <https://www.berkeleyside.com/2020/12/05/december-outdoor-dining-ban-in-berkeley>

⁴ Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration,” Berkeley City Council, Dec. 15, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/Documents/2020-12-15_Item_39_Path_to_Permanence_for_Outdoor.aspx.

Extension of the temporary outdoor dining and commerce permits was discussed with both Economic Development and Public Works staff, to explore feasibility, benefits, costs, and potential for synergies with the Path to Permanence referral. Staff expressed their general support for the 9-month extension of temporary parklet and outdoor dining permits proposed by this item and did not see conflicts with the referrals already under consideration. They also provided a great deal of helpful information. Our office also reached out to a number of restaurant owners with temporary parklet permits to ask for their thoughts and input.

Staff has already spent considerable time exploring options for the path to permanence, with work in process to identify and address a variety of elements and considerations.

While parklets previously have been created for public use and with permanent structures, most of the parklets/seating areas created in the public right of way during the COVID emergency have been established for private use by patrons of a single or several establishments, and many are made of temporary materials not suitable for long-term street installation. The approximately 40 temporary parklets and 10 group street closures occupy approximately 69 parking spaces which under normal circumstances would each generate around \$4,500 per space in income for the City of Berkeley's Parking Fund. Because there is so little demand for parking at this time, the temporary parklets have a very small, if any, impact on parking revenues. In light of the pandemic, normal parklet permitting fees were also waived for the temporary permits.

Transitioning all temporary permits to permanent status after the COVID-19 emergency order is lifted, and assuming demand for parking were to return to pre-COVID levels, would entail permanent loss of up to approximately \$325,000 per year to the Parking Fund, or \$3.25M over ten years (assuming current parking rates are not raised, in which case maximum per-year costs would be greater), unless a fee were levied for use of the spaces taken, as is the case with construction sites that pay for use of parking spaces to accommodate their vehicles and equipment. Unless the City were to use General Fund or other dollars to repay the Parking Fund for this long term loss of parking revenues, permanent parklets used for private purposes would need to pay a yearly fee of \$4,500 or more per parking space occupied to make up for lost revenues to the Parking Fund.

Transitioning temporary permits to permanent status without charging a permitting fee, which is also an option contemplated by the Path to Permanence, would displace normally expected permitting revenues. Initial permitting fees were waived for the temporary parklets/outdoor dining and commerce permits under the emergency order; the Path to Permanence contemplates waving them for a second time. It is possible that fees for the second round of permitting may end up being levied.

For both of these reasons -- permanent displacement of parking revenues and potential costs associated with permitting -- it is unlikely that long-term permits for parklets in public and revenue-producing locations (parking spaces) can be offered for exclusive use to private establishments without charging some level of rent and/or fees. This would also be consistent with current practice in the City of Berkeley, where franchise agreements, fees and/or licenses are required to operate private facilities in the public

right of way. Even if all of the temporary private parklets were converted to public rather than private use and maintained by the City, parking fees would be displaced and costs incurred to reinforce parklet structures and maintain them.

Additional elements of a permanent program of outdoor commerce are likely to include the structural and design requirements of permanent installments as well as service/cleanliness and maintenance. Merchants that have not yet invested the funds necessary for a facility that meets permanent standards will likely be required to make those investments to be permitted for permanent use, and a franchise, maintenance, license and/or other agreement entered into to ensure the facility is paid for and kept clean and well-maintained.

Sadly, many restaurants may continue to experience extreme financial distress even after the lifting of the emergency order, with back rent coming due, and a ramp-up taking place under unknown economic circumstances. Even in normal times establishments periodically leave locations, or go out of business.

From this arises the question of who will take responsibility for maintenance of a permanent private parklet if the original establishment leaves the premises, and who will bear the cost of removing it if no one can be found to take-over use and maintenance. A variety of options are being discussed: requiring the property owner to join the permit/license to establish and maintain the parklet space; making the permit/license transferable to another adjacent establishment or BID; and/or transferring responsibility for maintenance of the parklet to the City -- and allocating funds in support.

None of these and other factors being discussed is insurmountable, and the goal of a program to transition temporary parklets to permanent status as seamlessly as possible is achievable. However, as is often the case, there are complexities and costs that will need to be considered at every step, which may render the option of transitioning to permanent status less viable for some businesses that currently maintain temporary parklet space at very little cost.

This item's nine-month extension⁵ of temporary parklet/outdoor dining and commerce permits after the COVID-19 emergency is lifted provides a third path that complements and supports the goals of the Path to Permanence. It provides an extended but finite opportunity for struggling restaurants to operate their temporary outdoor seating facilities under existing permits, and to better evaluate the benefits and costs of making the transition to -- and investment and commitment required for -- permanence.

It should be noted that while the temporary permits would be extended for up to a full year, there is no requirement for an establishment to maintain the facility the entire time. Temporary permit-holders can, and could at any time during the term of the extended permit, remove their facilities and cease to provide outdoor parklets/seating. For some establishments, maintaining outdoor space will not be attractive and/or feasible, especially once they have permission to use the full capacity of their indoor premises.

⁵ Temporary permits are already extended for three months; this item would extend them nine more, for a total of 12 months/one year.

Some establishments may move locations or cease operations, which would also result in removal of their outdoor premises prior to the end of the one year term.

Extension of the temporary permit for up to a full year would provide establishments an opportunity for extra revenue with no added costs or permitting transactions, should they determine that operating and maintaining the outdoor space is an economic benefit at a time of transition and uncertainty. Should they find it beneficial to operate outdoor space alongside their indoor space over the course of the first year, they will have benefitted from an extended period of time to consider the feasibility of taking on a permanent installation. Without the benefit of experiencing use and maintenance of their outdoor space under normalizing circumstances, it is likely that fewer establishments will take the risk of committing to the additional costs and responsibilities a permanent program will likely entail, even if City's likely rent and/or fees are kept to a bare minimum. Conversations with two restaurants that currently have temporary installations occupying parking spaces confirm that plans for maintaining outdoor seating after lifting of the COVID emergency order are not firm at this time; both are interested in experimenting and expressed strong support for this item.

It is unlikely that the economy will bounce back overnight once the emergency order is lifted. The City's own financial projections do not anticipate an immediate rebound, and restaurant owners report that they are unlikely to know ahead of time whether they will be able to fill their indoor spaces to capacity, let alone added outdoor space. Especially if nearby attractions such as theaters, shopping and other complementary establishments are not back to full operations, their business may ramp up slowly, if at all. Restaurant owners will also be scrambling to hire and train new staff, manage any transitional public health requirements that may be in place, negotiate rent reductions or cancellation of back rent with their landlords, find new vendors for supplies where former suppliers went out of business, and otherwise manage the crushing change that has been their reality now for almost a full year, and will likely continue for at least one more. Providing extra time to manage all of this change, test the waters of the recovering economy, and re-establish their business and financial position, will provide a much better basis for determining the viability of taking on outdoor space for the long term - with likely added costs.

Another benefit of adding this proposed extension of temporary permits to the mix is to allow establishments that have made significant investments in establishing their temporary spaces to reap some benefit from the investment already made -- even if they don't plan to transition to permanent status. While some businesses established their parklets in the spring and were able to reap revenues from their investments for several months, many others had just opened their spaces when the second full shut-down was ordered. Even if they end up deciding not to take on outdoor space for the long run, allowing establishments a year to benefit from the temporary space is a way to let them benefit from their investment at a very difficult time. By the same token, the extended temporary permit term also will incentivize more establishments to experiment with outdoor space once the current outdoor dining ban is lifted. Without the extension, it is less likely that new temporary permits will be requested as the investment may not be justified under the shorter anticipated timeline, now that vaccines have become available.

On the fiscal benefits side of the equation, extension of temporary permits that can be taken advantage of by those establishments who find the free use of outdoor space beneficial to their bottom line will serve to increase depressed business license tax revenues, and can provide much-needed liveliness for commercial areas that need to attract back shoppers, arts patrons, diners and other consumers. For some establishments, benefitting from the extra boost in revenues that free private outdoor space provides could be the difference between survival or closing the doors on their business. The positive impact therefore is to stem the potential loss of and/or increase tax revenues from individual businesses, and the spillover positive impact on nearby businesses that will benefit from an enlivened commercial environment. One business consulted said extending the temporary permit for one year would be “a huge benefit -- the best thing Berkeley ever did to support its restaurants” -- an important economic stimulus for the whole sector.

On the costs side, the calculation is the same as for permanent permits, but for a finite amount of time -- nine months (the first three were already provided for in the original temporary parklet ordinance language) -- and likely at a lower per-year rate of revenue displacement than a long term permit. It's safe to assume that in the first few months and possibly year that the economy is reopening, parking volumes may not return to pre-COVID levels. So the revenue foregone from each space in the first year after the order is lifted is likely to be less than what would be foregone pre-COVID -- or when the economy has fully recovered. In addition, it is unlikely that all establishments that currently have (or in the next few months may obtain) temporary outdoor dining permits will maintain them after the order is lifted. Some may remove their outdoor space immediately after -- or even before -- the emergency is lifted, and others may only keep their outdoor space for several months after -- freeing spaces for parking long before the year is over. The “lost revenue” in the first year after the lifting of the order is unlikely to be anywhere near the full amount that would be foregone if every temporary outdoor commerce installation were maintained for the full year, and every parking space had been filled at normal capacity.

According to staff, the maximum added loss this item would entail, *assuming all current temporary parklets were to remain in place for a full twelve months and parking demand were to snap back to “normal” levels the day after the emergency order is lifted*, would be approximately \$240,000 (the first three months are already provided for in the existing ordinance, at an outside cost of approximately \$80,000, with the same assumptions). If all of the temporary parklets were dismantled on average six months after the order was lifted, and parking was at 100% of pre-COVID levels, the revenue loss for the extra/second three months would be one third of \$240,000, or \$80,000. Further assuming that parking demand over the course of the first year after the order is lifted were at 75% of “normal,” the foregone parking income for the second three months would be 25% less than \$80,000, or \$60,000.

To state another way, assuming parking were at pre-COVID-19 levels, the cost to the City's Parking Fund for giving up 69 spaces would be approximately \$320,000 per year, or \$80,000 per quarter/three months. The temporary outdoor commerce permits currently in place already allow for installations to remain in place for up to 90 days after

the end of the emergency order, potentially representing one quarter/three months, or \$80,000, of pre-COVID-level parking revenues. By extending the period for temporary permits for another three quarters/nine months after lifting of the emergency order, another \$240,000 of parking revenues are potentially impacted, assuming parking levels return immediately to pre-COVID levels, and all outdoor commerce installations remain in place for the full 12 months.

However, *this is very unlikely to be the real cost of allowing temporary permits to remain in place up to four quarters/12 months.* Estimating that, on average, installations only remain in place for two quarters/six months after the lifting of the order (some remaining in a place full 12 months, some closing immediately, and the rest falling in between), this item's impact to the parking fund would represent only one additional quarter/three months, or \$80,000. Further making the assumption that parking levels will not return to 100% of previous levels immediately after the order is lifted, but over the course of the first year will only be 75% of "normal," the dollar value of a second quarter/three months would be reduced to \$60,000 -- a reasonable estimate of the additional cost of this item.

Should the Parking Fund need reimbursement of this relatively small amount of potential lost revenue, which will provide a highly valued stimulus to those businesses choosing to keep their temporary outdoor space open longer than the three months already provided, and help them make an informed decision about transitioning their outdoor space to permanent status, Council can refer an amount of \$60,000-\$80,000, a reasonable estimate of the financial impact of this item, to reimburse the Parking Fund from the General Fund.

FISCAL IMPACTS

See above; potential benefits to business license taxes and long term economic recovery of commercial areas, as well as a limited extension of existing impacts on already-reduced parking revenues.

CONTACT INFORMATION

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ATTACHMENT

Ordinance 16.18.010 Right of Way Encroachments and Encroachment Permits and 14.48.150 Sidewalk Seating, Benches, and Planters

ORDINANCE NO. ##,###-N.S.

AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND
ENCROACHMENT PERMITS OF THE BERKELEY MUNICIPAL CODE AND
AMENDING SECTION 14.48.150 SIDEWALK SEATING, BENCHES, AND PLANTERS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

16.18.010 Definitions.

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;
2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable.

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade. Improvements identified in chapters 16.04, 16.24 and 17.16, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee; flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and their authorized delegate.

F. "Permittee" means any person(s), firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors-in-interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7706-NS § 2, 2020; Ord. 7598-NS § 2, 2018; Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07; Ord. 5514-NS § 1, 1983)

Section 2. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

14.48.150 Sidewalk seating, benches and planters.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.

2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

2. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.

3. "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.

4. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

5. "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific

regulations for sidewalk cafe seating, and establishes general regulations for the placement of sidewalk cafe seating in the public right-of-way, for the designated district.

6. "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.

7. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.

8. "Planter" means a container that is designed or used for growing plants.

9. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.

10. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).

11. "Sidewalk Seating" means tables and/or chairs (including benches) and umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk. During cases of a declared City emergency in response to a disease outbreak, "Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the

declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

12. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

13. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

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3. All sidewalk seating shall be subject to the following additional standards and requirements:
 - a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
 - b. All Sidewalk Seating components shall be stored in a secure location on private property when not in use.
 - c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.
4. All benches and planters shall be subject to the following additional standards and requirements:
 - a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.
- D. All permits issued under this Section shall be subject to the following conditions:
 1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.
 2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.
 3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way

as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under this Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.

8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

- a. Physically defined and clearly part of the restaurant it serves; and
- b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. (Ord. 7707-NS § 1, 2020; Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)

14.48.160 Removal of obstructions on streets and sidewalks.

Anything placed or permitted to remain upon any sidewalk or roadway in violation of this Chapter, is declared to constitute a nuisance and the City is authorized and empowered to abate such nuisance by removing the same to the custodian of lost property in the Police Department or the Corporation Yard of the City, or other location designated by the City. (Ord. 7632-NS § 1 (part), 2018; Ord. 3262-NS § 12.2, 1952. Formerly 14.48.210)

14.48.170 Use of streets and sidewalks by vendors.

Any properly licensed vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this section.

A. Sidewalk vending is permitted as regulated by Chapter 9.48 of the Berkeley Municipal Code.

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section. (Ord. 7632-NS § 1 (part), 2018; Ord. 5483-NS § 1 (part), 1982; Ord. 4587-NS § 1, 1972; Ord. 4569-NS § 1, 1972; Ord. 3262-NS § 12.3, 1952. Formerly 14.48.220)

14.48.180 Trap doors in sidewalks.

A. Trap doors in sidewalks used to cover an opening for an elevator, stairway or chute must be kept in such a condition that they will not endanger persons or property, and it is unlawful for any person owning or being in charge or control of any such doors in sidewalks used for covering entrances to elevators, stairways or chutes, or other openings in the sidewalk leading to the basement, to allow said doors to remain open, except when such elevator, stairway or chute is being used and monitored for pedestrian safety while loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks. (Ord. 7632-NS § 1 (part), 2018: Ord. 3262-NS § 12.6, 1952. Formerly 14.48.250)

14.48.190 Parklets.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.150) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.

2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.
5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).
7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.
8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
3. Objects permitted under this Section shall not:

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- a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
 - b. Block or obstruct the view of necessary authorized traffic devices;
 - c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
 - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;
 - e. Be affixed to any City or utility company-owned poles or appurtenances;
 - f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.
4. All Parklets shall be subject to the following additional standards and requirements:
 - a. Parklets must remain publicly accessible and must include signage posted on site to this effect;
 - b. Parklet construction materials must be of high quality, durable, and suitable for public use;
 - c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
 - d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;

e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;

f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.

5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:

a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;

b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;

c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.

D. All permits issued under this Section shall be subject to the following conditions:

1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the

City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D(4) is not applicable in cases of declared local emergency due to disease outbreak.

5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations. Section D(9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section. (Ord. 7706-NS § 1, 2020: Ord. 7632-NS § 1 (part), 2018: Ord. 7598-NS § 1, 2018. Formerly 14.48.300)



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CONSENT CALENDAR

January 19, 2021

To: Honorable Members of the City Council
From: Councilmember Sophie Hahn (Author), Councilmembers Kate Harrison and Ben Bartlett (Cosponsors)
Subject: Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19

RECOMMENDATION

Adopt an ordinance revising BMC Chapter 16.18 *Right-of-Way Encroachments and Encroachment Permits* and BMC Section 14.48.150 *Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

BACKGROUND

On June 2, 2020, the City Council referred to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency.¹

The item further directed the City Manager to facilitate and expedite potential use of both public and private property for outdoor dining and other retail activities by implementing or, where necessary, returning to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations. To eliminate a financial burden on small businesses, the City Manager was requested to consider reducing or waiving permitting and other fees.

On June 16, the Council adopted an Urgency Ordinance taking actions to allow for increased outdoor dining and commerce in the public right-of-way, including to simplify the permitting process for parklets during a declared local emergency; and to expand the areas and scope of

¹“ Berkeley Safe Open Air Dining and Commerce,” Berkeley City Council, June 2, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/Documents/2020-06-02_Supp_2_Reports_Item_11_Rev_Hahn_pdf.aspx.

activities that may be permitted via a sidewalk seating permit during the term of a declared City emergency; and a Resolution authorizing the City Manager to waive permit fees for one year for temporary structures and activities permitted in the public right of way.²

City staff responded by expanding the range of allowed outdoor activities on both public and private property and streamlining permitting processes. The City offered options for permitting outdoor business activities during COVID-19, on private property or in the public right-of-way, including street closure permits, sidewalk seating, and parklets.

Since the adoption of the Berkeley Safe Open Air Dining and Commerce referral and subsequent Urgency Ordinance, dozens of businesses have utilized parklets and built facilities for outdoor seating, allowing patrons space to safely dine and shop in the open air while maintaining social distance. Overall, the program has been a tremendous success, affording local restaurants and other businesses the ability to survive and continue to pay staff during a difficult time.³

On December 15, the Council referred to the City Manager “Path to Permanence” legislation requesting development of a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City’s declaration of emergency to permanent status.⁴ Some businesses may follow this path to permanence, while others may choose to end outdoor dining and commerce when the COVID-19 emergency is terminated.

This item offers a third path by adopting an ordinance to extend the period of time that parklets and sidewalk seating established under the COVID-19 emergency order can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

Under this proposal, businesses that have made an investment in open air dining and commerce structures during the pandemic will have longer to recoup their costs and to decide whether to transition to a permanent facility. In addition, extending the period of time that sidewalk seating and parklets can remain in place will allow staff more time to work with those seeking to transition their temporary outdoor dining and commerce permits to permanent status.

²“ Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way,” Berkeley City Council, June 16, 2020, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

³ <https://www.berkeleyside.com/2020/12/05/december-outdoor-dining-ban-in-berkeley>

⁴“ Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration,” Berkeley City Council, Dec. 15, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/Documents/2020-12-15_Item_39_Path_to_Permanence_for_Outdoor.aspx.

CONSULTATION

Extension of the temporary outdoor dining and commerce permits was discussed with both Economic Development and Public Works staff, to explore feasibility, benefits, costs, and potential for synergies with the Path to Permanence referral. Staff expressed their general support for the 9-month extension of temporary parklet and outdoor dining permits proposed by this item and did not see conflicts with the referrals already under consideration. They also provided a great deal of helpful information. Our office also reached out to a number of restaurant owners with temporary parklet permits to ask for their thoughts and input.

Staff has already spent considerable time exploring options for the path to permanence, with work in process to identify and address a variety of elements and considerations.

While parklets previously have been created for public use and with permanent structures, most of the parklets/seating areas created in the public right of way during the COVID emergency have been established for private use by patrons of a single or several establishments, and many are made of temporary materials not suitable for long-term street installation. The approximately 40 temporary parklets and 10 group street closures occupy approximately 69 parking spaces which under normal circumstances would each generate around \$4,500 per space in income for the City of Berkeley's Parking Fund. Because there is so little demand for parking at this time, the temporary parklets have a very small, if any, impact on parking revenues. In light of the pandemic, normal parklet permitting fees were also waived for the temporary permits.

Transitioning all temporary permits to permanent status after the COVID-19 emergency order is lifted, and assuming demand for parking were to return to pre-COVID levels, would entail permanent loss of up to approximately \$325,000 per year to the Parking Fund, or \$3.25M over ten years (assuming current parking rates are not raised, in which case maximum per-year costs would be greater), unless a fee were levied for use of the spaces taken, as is the case with construction sites that pay for use of parking spaces to accommodate their vehicles and equipment. Unless the City were to use General Fund or other dollars to repay the Parking Fund for this long term loss of parking revenues, permanent parklets used for private purposes would need to pay a yearly fee of \$4,500 or more per parking space occupied to make up for lost revenues to the Parking Fund.

Transitioning temporary permits to permanent status without charging a permitting fee, which is also an option contemplated by the Path to Permanence, would displace normally expected permitting revenues. Initial permitting fees were waived for the temporary parklets/outdoor dining and commerce permits under the emergency order; the Path to Permanence contemplates waving them for a second time. It is possible that fees for the second round of permitting may end up being levied.

For both of these reasons -- permanent displacement of parking revenues and potential costs associated with permitting -- it is unlikely that long-term permits for parklets in public and revenue-producing locations (parking spaces) can be offered for exclusive use to private establishments without charging some level of rent and/or fees. This would also be consistent with current practice in the City of Berkeley, where franchise agreements, fees and/or licenses are required to operate private facilities in the public right of way. Even if all of the temporary private parklets were converted to public rather than private use and maintained by the City,

parking fees would be displaced and costs incurred to reinforce parklet structures and maintain them.

Additional elements of a permanent program of outdoor commerce are likely to include the structural and design requirements of permanent installments as well as service/cleanliness and maintenance. Merchants that have not yet invested the funds necessary for a facility that meets permanent standards will likely be required to make those investments to be permitted for permanent use, and a franchise, maintenance, license and/or other agreement entered into to ensure the facility is paid for and kept clean and well-maintained.

Sadly, many restaurants may continue to experience extreme financial distress even after the lifting of the emergency order, with back rent coming due, and a ramp-up taking place under unknown economic circumstances. Even in normal times establishments periodically leave locations, or go out of business.

From this arises the question of who will take responsibility for maintenance of a permanent private parklet if the original establishment leaves the premises, and who will bear the cost of removing it if no one can be found to take-over use and maintenance. A variety of options are being discussed: requiring the property owner to join the permit/license to establish and maintain the parklet space; making the permit/license transferable to another adjacent establishment or BID; and/or transferring responsibility for maintenance of the parklet to the City -- and allocating funds in support.

None of these and other factors being discussed is insurmountable, and the goal of a program to transition temporary parklets to permanent status as seamlessly as possible is achievable. However, as is often the case, there are complexities and costs that will need to be considered at every step, which may render the option of transitioning to permanent status less viable for some businesses that currently maintain temporary parklet space at very little cost.

This item's nine-month extension⁵ of temporary parklet/outdoor dining and commerce permits after the COVID-19 emergency is lifted provides a third path that complements and supports the goals of the Path to Permanence. It provides an extended but finite opportunity for struggling restaurants to operate their temporary outdoor seating facilities under existing permits, and to better evaluate the benefits and costs of making the transition to -- and investment and commitment required for -- permanence.

It should be noted that while the temporary permits would be extended for up to a full year, there is no requirement for an establishment to maintain the facility the entire time. Temporary permit-holders can, and could at any time during the term of the extended permit, remove their facilities and cease to provide outdoor parklets/seating. For some establishments, maintaining outdoor space will not be attractive and/or feasible, especially once they have permission to use the full capacity of their indoor premises. Some establishments may move locations or cease operations, which would also result in removal of their outdoor premises prior to the end of the one year term.

⁵ Temporary permits are already extended for three months; this item would extend them nine more, for a total of 12 months/one year.

Extension of the temporary permit for up to a full year would provide establishments an opportunity for extra revenue with no added costs or permitting transactions, should they determine that operating and maintaining the outdoor space is an economic benefit at a time of transition and uncertainty. Should they find it beneficial to operate outdoor space alongside their indoor space over the course of the first year, they will have benefitted from an extended period of time to consider the feasibility of taking on a permanent installation. Without the benefit of experiencing use and maintenance of their outdoor space under normalizing circumstances, it is likely that fewer establishments will take the risk of committing to the additional costs and responsibilities a permanent program will likely entail, even if City's likely rent and/or fees are kept to a bare minimum. Conversations with two restaurants that currently have temporary installations occupying parking spaces confirm that plans for maintaining outdoor seating after lifting of the COVID emergency order are not firm at this time; both are interested in experimenting and expressed strong support for this item.

It is unlikely that the economy will bounce back overnight once the emergency order is lifted. The City's own financial projections do not anticipate an immediate rebound, and restaurant owners report that they are unlikely to know ahead of time whether they will be able to fill their indoor spaces to capacity, let alone added outdoor space. Especially if nearby attractions such as theaters, shopping and other complementary establishments are not back to full operations, their business may ramp up slowly, if at all. Restaurant owners will also be scrambling to hire and train new staff, manage any transitional public health requirements that may be in place, negotiate rent reductions or cancellation of back rent with their landlords, find new vendors for supplies where former suppliers went out of business, and otherwise manage the crushing change that has been their reality now for almost a full year, and will likely continue for at least one more. Providing extra time to manage all of this change, test the waters of the recovering economy, and re-establish their business and financial position, will provide a much better basis for determining the viability of taking on outdoor space for the long term - with likely added costs.

Another benefit of adding this proposed extension of temporary permits to the mix is to allow establishments that have made significant investments in establishing their temporary spaces to reap some benefit from the investment already made -- even if they don't plan to transition to permanent status. While some businesses established their parklets in the spring and were able to reap revenues from their investments for several months, many others had just opened their spaces when the second full shut-down was ordered. Even if they end up deciding not to take on outdoor space for the long run, allowing establishments a year to benefit from the temporary space is a way to let them benefit from their investment at a very difficult time. By the same token, the extended temporary permit term also will incentivize more establishments to experiment with outdoor space once the current outdoor dining ban is lifted. Without the extension, it is less likely that new temporary permits will be requested as the investment may not be justified under the shorter anticipated timeline, now that vaccines have become available.

On the fiscal benefits side of the equation, extension of temporary permits that can be taken advantage of by those establishments who find the free use of outdoor space beneficial to their bottom line will serve to increase depressed business license tax revenues, and can provide much-needed liveliness for commercial areas that need to attract back shoppers, arts patrons, diners and other consumers. For some establishments, benefitting from the extra boost in

revenues that free private outdoor space provides could be the difference between survival or closing the doors on their business. The positive impact therefore is to stem the potential loss of and/or increase tax revenues from individual businesses, and the spillover positive impact on nearby businesses that will benefit from an enlivened commercial environment. One business consulted said extending the temporary permit for one year would be “a huge benefit -- the best thing Berkeley ever did to support its restaurants” -- an important economic stimulus for the whole sector.

On the costs side, the calculation is the same as for permanent permits, but for a finite amount of time -- nine months (the first three were already provided for in the original temporary parklet ordinance language) -- and likely at a lower per-year rate of revenue displacement than a long term permit. It's safe to assume that in the first few months and possibly year that the economy is reopening, parking volumes may not return to pre-COVID levels. So the revenue foregone from each space in the first year after the order is lifted is likely to be less than what would be foregone pre-COVID -- or when the economy has fully recovered. In addition, it is unlikely that all establishments that currently have (or in the next few months may obtain) temporary outdoor dining permits will maintain them after the order is lifted. Some may remove their outdoor space immediately after -- or even before -- the emergency is lifted, and others may only keep their outdoor space for several months after -- freeing spaces for parking long before the year is over. The “lost revenue” in the first year after the lifting of the order is unlikely to be anywhere near the full amount that would be foregone if every temporary outdoor commerce installation were maintained for the full year, and every parking space had been filled at normal capacity.

According to staff, the maximum added loss this item would entail, *assuming all current temporary parklets were to remain in place for a full twelve months and parking demand were to snap back to “normal” levels the day after the emergency order is lifted*, would be approximately \$240,000 (the first three months are already provided for in the existing ordinance, at an outside cost of approximately \$80,000, with the same assumptions). If all of the temporary parklets were dismantled on average six months after the order was lifted, and parking was at 100% of pre-COVID levels, the revenue loss for the extra/second three months would be one third of \$240,000, or \$80,000. Further assuming that parking demand over the course of the first year after the order is lifted were at 75% of “normal,” the foregone parking income for the second three months would be 25% less than \$80,000, or \$60,000.

To state another way, assuming parking were at pre-COVID-19 levels, the cost to the City's Parking Fund for giving up 69 spaces would be approximately \$320,000 per year, or \$80,000 per quarter/three months. The temporary outdoor commerce permits currently in place already allow for installations to remain in place for up to 90 days after the end of the emergency order, potentially representing one quarter/three months, or \$80,000, of pre-COVID-level parking revenues. By extending the period for temporary permits for another three quarters/nine months after lifting of the emergency order, another \$240,000 of parking revenues are potentially impacted, assuming parking levels return immediately to pre-COVID levels, and all outdoor commerce installations remain in place for the full 12 months.

However, *this is very unlikely to be the real cost of allowing temporary permits to remain in place up to four quarters/12 months*. Estimating that, on average, installations only remain in place for two quarters/six months after the lifting of the order (some remaining in a place full 12

months, some closing immediately, and the rest falling in between), this item's impact to the parking fund would represent only one additional quarter/three months, or \$80,000. Further making the assumption that parking levels will not return to 100% of previous levels immediately after the order is lifted, but over the course of the first year will only be 75% of "normal," the dollar value of a second quarter/three months would be reduced to \$60,000 - a reasonable estimate of the additional cost of this item.

Should the Parking Fund need reimbursement of this relatively small amount of potential lost revenue, which will provide a highly valued stimulus to those businesses choosing to keep their temporary outdoor space open longer than the three months already provided, and help them make an informed decision about transitioning their outdoor space to permanent status, Council can refer an amount of \$60,000-\$80,000, a reasonable estimate of the financial impact of this item, to reimburse the Parking Fund from the General Fund.

FISCAL IMPACTS

See above; Ppotential benefits to business license taxes and long term economic recovery of commercial areas, as well as a limited extension of existing impacts on already-reduced parking revenues that would have been generated by parking meters, fees, and citations.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENT

Ordinance 16.18.010 Right of Way Encroachments and Encroachment Permits and 14.48.150 Sidewalk Seating, Benches, and Planters

ORDINANCE NO. ##,###-N.S.

AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND ENCROACHMENT PERMITS OF THE BERKELEY MUNICIPAL CODE AND AMENDING SECTION 14.48.150 SIDEWALK SEATING, BENCHES, AND PLANTERS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

16.18.010 Definitions.

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;
2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable.

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade. Improvements identified in chapters 16.04, 16.24 and 17.16, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs;

disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee; flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and their authorized delegate.

F. "Permittee" means any person(s), firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors-in-interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7706-NS § 2, 2020; Ord. 7598-NS § 2, 2018; Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07; Ord. 5514-NS § 1, 1983)

Section 2. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

14.48.150 Sidewalk seating, benches and planters.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.
 2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.
- B. For purposes of this Chapter, the following terms shall be defined as follows:
1. "Bench" means a seat designed for two or more persons.
 2. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.
 3. "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.
 4. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.
 5. "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for sidewalk cafe seating, and establishes general regulations for the placement of sidewalk cafe seating in the public right-of-way, for the designated district.
 6. "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.
 7. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.

8. "Planter" means a container that is designed or used for growing plants.
9. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.
10. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).
11. "Sidewalk Seating" means tables and/or chairs (including benches) and umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk. During cases of a declared City emergency in response to a disease outbreak, "Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.
12. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.
13. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

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1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Objects permitted under this Section shall not:
 - a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
 - b. Block or obstruct the view of necessary authorized traffic devices;
 - c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;
 - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;
 - e. Be affixed to any City or utility company-owned poles or appurtenances;
3. All sidewalk seating shall be subject to the following additional standards and requirements:
 - a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
 - b. All Sidewalk Seating components shall be stored in a secure location on private property when not in use.
 - c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.

4. All benches and planters shall be subject to the following additional standards and requirements:
 - a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.
- D. All permits issued under this Section shall be subject to the following conditions:
 1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.
 2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.
 3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.
 4. Permits issued under this Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.
 5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's

installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.

8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

a. Physically defined and clearly part of the restaurant it serves; and

b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. (Ord. 7707-NS § 1, 2020; Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)

14.48.160 Removal of obstructions on streets and sidewalks.

Anything placed or permitted to remain upon any sidewalk or roadway in violation of this Chapter, is declared to constitute a nuisance and the City is authorized and empowered to abate such nuisance by removing the same to the custodian of lost property in the Police

Department or the Corporation Yard of the City, or other location designated by the City. (Ord. 7632-NS § 1 (part), 2018: Ord. 3262-NS § 12.2, 1952. Formerly 14.48.210)

14.48.170 Use of streets and sidewalks by vendors.

Any properly licensed vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this section.

A. Sidewalk vending is permitted as regulated by Chapter 9.48 of the Berkeley Municipal Code.

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section. (Ord. 7632-NS § 1 (part), 2018: Ord. 5483-NS § 1 (part), 1982: Ord. 4587-NS § 1, 1972: Ord. 4569-NS § 1, 1972: Ord. 3262-NS § 12.3, 1952. Formerly 14.48.220)

14.48.180 Trap doors in sidewalks.

A. Trap doors in sidewalks used to cover an opening for an elevator, stairway or chute must be kept in such a condition that they will not endanger persons or property, and it is unlawful for any person owning or being in charge or control of any such doors in sidewalks used for covering entrances to elevators, stairways or chutes, or other openings in the sidewalk leading to the basement, to allow said doors to remain open, except when such elevator, stairway or chute is being used and monitored for pedestrian safety while loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks. (Ord. 7632-NS § 1 (part), 2018: Ord. 3262-NS § 12.6, 1952. Formerly 14.48.250)

14.48.190 Parklets.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.150) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.
2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.
3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.
5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).

7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.

8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

3. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.

4. All Parklets shall be subject to the following additional standards and requirements:

- a. Parklets must remain publicly accessible and must include signage posted on site to this effect;
- b. Parklet construction materials must be of high quality, durable, and suitable for public use;
- c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
- d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
- e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
- f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.

5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:

- a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;
- b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
- c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.

D. All permits issued under this Section shall be subject to the following conditions:

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1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.
2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.
3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.
4. Permits issued under this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D(4) is not applicable in cases of declared local emergency due to disease outbreak.
5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.
6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches,

Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations. Section D(9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section. (Ord. 7706-NS § 1, 2020: Ord. 7632-NS § 1 (part), 2018: Ord. 7598-NS § 1, 2018. Formerly 14.48.300)